HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI

Writ Petition No.4622 of 2001

Between:

Potluri Agro Food Products Pvt. Ltd.,
Vijayawada, rep. by its
Managing Director, Sri P.V. Krishna Rao

… Petitioner

And

The Special Secretary, Agricultural
Market Committee, Vijayawada and another

… Respondents

:: ORDER::

Counsel for Petitioners: Shri K. Ravindra Kumar

Counsel for the Respondents: Shri K. Madhava Reddy

July 18, 2007

This is a petition by M/s.Potluri Agro Food Products Private Limited for quashing proceedings dated 28.2.2001 issued by Special Grade Secretary, Agricultural Market Committee, Vijayawada (for short, 'the Market Committee') for levy of market fee amounting to Rs.2,40,222/-.

The petitioner is engaged in the manufacturing of maida, atta, wheatbran etc. from the wheat purchased from different places. It has a processing unit within the notified area of the Market Committee. It is also registered as 'dealer' under the Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966.

During 1999-2000, the petitioner purchased wheat worth Rs. 6,06,51,343/-. Out of this, wheat valued at Rs.3,66,29,136/- was purchased from the Food Corporation of India (for short, 'the Corporation') after paying the market fee. The remaining wheat valued at Rs.2,40,22,207/- was purchased from the States of Uttar Pradesh, Madhya Pradesh, Punjab etc. and converted into maida, atta, wheatbran etc, which are not notified as 'agricultural produce'. The petitioner submitted details of all the purchases to the Market Committee and claimed exemption under Rule 74 of the Andhra Pradesh (Agricultural Produce and Livestock) Markets Rules, 1969 in respect of the wheat purchased from the market from outside the State by asserting that there has been no sale and purchase within the market area. After sometime, Special Grade Secretary of the Market Committee issued the impugned proceedings and declared that the petitioner is liable to pay the market fee amounting to Rs.2,40,222/-. The relevant extracts of the impugned proceedings are reproduced below:

WHEAT PURCHASED FROM OTHER STATES GRANTED EXEMPTION:-

This flour mill purchased wheat from other States mentioned in their account books are verified and they submit representation that the said wheat purchased from other States and bring to the jurisdiction of Vijayawada Market Committee to Yenakipadu and with the said wheat they manufactured Ravva, Maida, Atta, Wheat-tavudu and sell the products, hence requested for exemption of market fee for the same.

During verification of their account books, the said entry mentioned in their account books vide page No.1 to 31 wheat purchased from other States Account entered. The same brought to Vijayawada Market Committee jurisdiction and milling the same as ravva and sell in the local market. The said flour mill shall pay market fee for the said transaction under Section 12 (1)(i) at the rate of 1% market fee, and obtain the receipts for the payment of market fee as per market rules Rule 74 (1)(i) and as per Para 24 (1)(3) should produce proof of market fee payment receipts. But, the said flour mill did not submit such payment receipts. Hence the turn-over of Rs.2,40,22,207/- did not grant any exemption of market fee.

III. NET-TURNOVER :: Rs.2,40,22,207/-

IV. Market Fee 1% on net turnover Rs. 2,40,222/-

Finally for the year 1999-2000 the following turnover is recorded:

1) Total purchase value Rs.6,06,51,343-00
2) Exempted turnover Rs.3,66,29,136-00
3) Net turnover value Rs.2,40,22,207-00

The above recorded purchases the following market fee shall pay is declared:

1) Total Market Value at 1% Rs.2,40,222-00
2) Already paid market fee above: Rs. -Nil-
3) Balance of market fee will pay Rs.2,40,222-00

The petitioner has relied on the judgment of this Court in **State of Andhra Pradesh v. National Council for the Church and Social Action, Kurnool**[1] and pleaded that the levy of market fee in respect of the wheat purchased from other States is legally impermissible.

Notice of the writ petition was served on the respondents sometime in 2001, but neither of them has filed reply to controvert the

averments contained in the affidavit of Shri P.V. Krishna, Managing Director of the petitioner.

I have heard learned counsel for the parties.

Since respondent No.1 has not controverted the fact that the petitioner had purchased wheat worth Rs.2,40,22,207/- from the States of Uttar Pradesh, Madhya Pradesh, Punjab etc. and used the same for manufacturing of maida, atta, wheatbran etc., which do not fall within the definition of 'agricultural produce', and that there has been no sale or purchase of agricultural produce within the area of the Market Committee, it must be held that the action of the Special Grade Secretary to levy market fee is without jurisdiction. In **Shalimar Chemical Works Ltd., Hyderabad v. Agril. Market Committee, Hyd.**[2], a Division Bench of this Court unequivocally held that unless the transaction of sale and purchase takes place within the notified market area, the Market Committee cannot levy market fee and that the purchases made outside the State cannot be subjected to levy of market fee unless the agricultural produce is put to sale within the notified market area. The propositions of law laid down in that case are as under:

> "18. Market fee is leviable, under Section 12 of the Act, on any notified agricultural produce, livestock or projects of livestock "purchased or sold in the notified market area". Explanation I to Section 12 (1) lays down that for the purposes of levy of market fee, agricultural produce, livestock or products of livestock taken out of a notified market area shall be presumed to have been purchased or sold within such area until the contrary is moved. Rule 74 (2) of the Rules, which is relevant, is in the following terms:
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> > "74 (2): Such fees shall be leviable as soon as the notified agricultural produce, livestock and products of livestock is purchased or sold by a licensee. The notified agricultural produce livestock or products of livestock shall be deemed to have been purchased of sold after the notified commodity has been weighed or measured or counted or when it is taken out of the notified market area."

> Unless there is a purchase or sale in the notified market area of any agricultural produce, livestock or products of livestock, the Market Committee shall have no power to levy market fee. If any notified agricultural produce, livestock or products of livestock is taken out of a notified market, the presumption is that the same has been purchased or sold within such area. But this is a rebuttable presumption. The Act does not define the expression 'sale' or purchase'. Even Explanation I to Section 12, which incorporates the presumption, goes to the extent of laying down that only if a notified agricultural produce is taken out of the market area, the presumption is attracted but not otherwise. It, therefore, follows that if a particular transaction is in effect not a sale or purchase and if it falls outside the ambit of Explanation to Section 12 (1), the same cannot, by a deeming provision either under the Rules or the Bye-Laws, be subject to market fee.
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> 19. What is forbidden by the Act cannot be permitted by a rule or a bye-law is a well settled legal principle. But the deeming provision contained in sub-rule (2) of Rule 74 travels far beyond what is permitted by the principal section by laying down inter alia, that after a notified commodity has been "weighted or measured or counted", it shall be deemed to have been purchased or sold. The facts of weighing or measuring or counting shall not by themselves be independently construed as acts of sale or purchased. If they are to be so construed, the sub-rule will have to be struck down as running counter to Section 12 (1). The only harmonious way of interpreting the sub-rule is by construing that the acts of weighing or measuring or counting referred to therein must be integrally connected with the transaction of sale or purchase. The same interpretation holds good so far as bye-law No. 24(5) is concerned as it is couched in the language identical to sub-rule (2) of Rule 74."

The above stated legal position is also reflected in Circular No.RC.I(3) 1770/97, dated 27.10.1998.

Shri K. Madhava Reddy, learned counsel for respondent No.1 fairly conceded the aforestated factual and legal position and candidly stated that he cannot justify the levy of market fee on the wheat purchased by the petitioner from outside the State of Andhra Pradesh.

In the result, the writ petition is allowed and the impugned proceedings are quashed.

G.S. SINGHVI, CJ

July 18, 2007

svs

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[1] 1996 (2) ALD 608

[2] 1996 (2) ALD 501 (DB)